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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/696,722	10/30/2003	Patrick R. Lancaster III	02906.0346	6330
22852 7590 06/13/2007 FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			EXAMINER PARADISO, JOHN ROGER	
			ART UNIT 3721	PAPER NUMBER
			MAIL DATE 06/13/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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## Office Action Summary

Application No.

10/696,722

Applicant(s)

LANCASTER ET AL.

Examiner

John R. Paradiso

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-38, 40-47, 49-58, 76-82, 84, 86-89 and 133-136 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-38, 40-47, 49-58, 76-82, 84, 86-89 and 133-136 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections*

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

2. Claims 1-38, 40-47, 49-58, 76-82, 84, 86-89, and 133-136 are rejected under 35 U.S.C. § 103(a) as being unpatentable over JAMES ET AL in view of BELL (US 4049130).

JAMES ET AL discloses a method and apparatus for dispensing pallets in which pallets are stored in a magazine (P) and lifted up from a bottommost pallet, the bottommost pallet being supported by a plate. The bottommost pallet is moved from under the magazine by pusher lugs through the gap created (121) and conveyed on rollers (19). (See JAMES ET AL column 3:62-4:38 and Fig. 1-2). The pusher lugs are mounted on a conveyor which is moved by a motor.

Examiner notes that a cantilever can be considered as a large bracket, held rigidly at one end. The claimed "cantilevered pusher bar" is being read on the pusher lugs of JAMES ET AL, since they are held rigidly on the end secured to the conveyor and extend outward to engage the pallet.

JAMES ET AL does not specifically disclose means for adjusting the size of an interior of the pallet magazine, nor does it disclose the pusher being spaced above the platform surface.

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BELL discloses a method and apparatus for dispensing flat objects (PB) from the bottom of a stack (S). The stack rests on a work surface (16) and the lowermost objects are pushed by a pusher (22) that is in turn moved by a pneumatic arm (26). The pusher (22) is spaced above the work surface.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of JAMES ET AL by adding the pusher of BELL in order to achieve the greater pushing force made possible by a pneumatic pusher.

Regarding claim 4, 24-26, 54-56, Fig. 2 of JAMES ET AL shows that the pusher lugs move from horizontal to vertical and back repeatedly.

Regarding claim 5, the pusher lugs of JAMES ET AL move from the rear of the pallet to the front and therefore from the rear gap created by the raising of the other pallets to the front gap, which was created the same way.

Regarding claim 18 and 31, sensors (not shown) provide input to a programmable logic controller (25) to sense jams and stop the machine as appropriate if a jam occurs (see column 14:14-38).

Regarding claim 13, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the pallet magazine size of JAMES ET AL adjustable by adding a means to adjust the size of an interior of the pallet magazine in order to accommodate different commercial sizes of pallets, since it has been held that the provision of adjustability, where needed, involves only routine skill in the art. *In re Stevens*, 101 USPQ 284 (CCPA 1954).

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Regarding claims 79 and 136, in A previous Office Action, Applicant was given Official Notice that the use of vibratory motion to reduce the incidence of snags between parts that move in proximity to one another is quite well known in the packaging art and it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide for a vibratory motion to the pallets to reduce the incidence of snags as one of the pallets is pulled from the stack. Since Applicant has not disagreed with this point, it will hereafter be referred to as admitted prior art.

Regarding claims 80 and 133, it would have been obvious to one of ordinary skill in the art at the time the invention was made to load the pallets and wrap the load as claimed, holding loads is the primary function of pallets and wrapping loads is well known in the art.

Examiner also notes that regarding the method claims (claim 23, 80, and 133 and their dependent claims), the order of operation may be intended, but is not specifically claimed. Applicant is reminded that during patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). *See also* MPEP § 2111. Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, *this is not the mode of claim interpretation to be applied during examination*. During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). *See also* MPEP § 2111.01.

***Response to Arguments***

3. Applicant's arguments filed 3/22/2007 have been fully considered but are considered moot in view of the new rejection above, except for the following answers.

4. Applicant states on pages 3-4 of his Response that BELL is non-analogous art since "Applicant's field of endeavor is pallet dispensing. In contrast, Bell's field of endeavor is 'counting yieldable flat articles,' i.e. books. .. Bell has nothing to do with pallet dispensing, and thus, Bell is not in the field of Applicant's endeavor."

However, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, the field of endeavor is dispensing flat articles.

5. Applicant states on page 5 of his Response that "Applicant submits that there would be no motivation to modify James, which already has lug 132 for pushing pallets, to include yet another pushing mechanism, ... as suggested on page 3 of the Office Action. To do so would be redundant. Lug 132 of James already pushes pallets, and adding pusher 22 of Bell to push the pallets would add cost and complexity to the apparatus in James, while serving no apparent function or purpose."

However, the presence of a pusher in JAMES ET AL does not make the addition of another or different pusher redundant. Examiner maintains that as stated above, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of JAMES ET AL by adding the pusher of BELL in order to achieve the greater pushing force made possible by a pneumatic pusher.

6. Applicant states on page 5 of his Response that "Further, as James moves only one pallet at a time, in order to permit each pallet to be individually inspected, no additional pushing force would be desirable in the device of James. Thus, one of ordinary skill would not be motivated to modify James with Bell for such a purpose."

However, this argument is not necessarily true, since larger, heavier, or rougher surfaced pallets will indeed require greater pushing force than smaller, lighter, or smoother surfaced pallets.

7. Applicant states on page 6 of his Response that "Bell, however, teaches pushers 22 that remove several articles at a time from stack S. ... Thus, if pushers 22 of Bell were added to James, they would move not only pallet P1, but also interfere with remaining pallets 302-305, possibly moving more than one pallet at a time or causing damage to the pallets 302-305 remaining in the stack due to friction between the stacked pallets."

However, the pushers of BELL do not push more than one object because they are inherently able to push only multiple objects, but rather by specific adjustments in size and the particular way in which it is used. With respect to the instant claims directed to apparatus, specific adjustments in size and the particular way in which it is used are not here considered structural limitations, but rather functional ones. With respect to the instant claims directed to method, Examiner points out that the rejection above recites the method of BELL as being modified by the method of JAMES ET AL regarding the adjustments of the magazine and the use of a pneumatic pusher, not

8. Applicant states on page 7 of his Response that “However, the pallet contacting portion of lug 132 of James is not vertically spaced away from the platform, and no gap exists between the pallet contacting portion of lug 132 and the platform. Therefore James certainly fails to disclose or suggest a cantilevered pusher bar or arm ‘having a pallet contacting portion that is vertically spaced away from the platform when the pusher bar is in a dispensing position, such that there is a gap between the pallet contacting portion and the platform,’ as required by independent claims...”.

However, this deficiency is filled by the teaching of BELL, as explained above, and Examiner maintains that it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of JAMES ET AL by adding the pusher of BELL in order to achieve the greater pushing force made possible by a pneumatic pusher.



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9. Applicant states on page 8 of his Response that “James actually teaches against loading the pallet and wrapping the load. ... Building a load on a pallet P1 and wrapping the load with packaging material would destroy the operator’s ability to pivot pallet P1, flip pallet P1, and/or inspect pallet P1. Accordingly, neither James nor Bell teaches or suggests all of the claim limitations recited in independent claims 80 and 133...”.

However, building a load on a pallet is the major purpose of using pallets, and wrapping the load on a pallet is notoriously well known in the art. Applicant’s argument with respect to JAMES ET AL is only valid if the loading and wrapping of the pallet were performed before inspection, etc were desired. The method claims of the instant invention may have intended a specific order of operation, but they do not require a specific order, so any inspection or other operations contemplated by JAMES ET AL could logically be performed and then the pallet loaded and wrapped.

Applicant is reminded that during patent examination of the claims, the pending claims must be given their broadest reasonable interpretation consistent with the specification. *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005). *See also* MPEP § 2111. Moreover, while the claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, *this is not the mode of claim interpretation to be applied during examination.* During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004). *See also* MPEP § 2111.01.

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10. Applicant states on page 9 of his Response that “In addition, at least some of these claims recite unique combinations that are neither taught nor suggested by the cited art, and are therefore also separately patentable. For example, claim 14 recites, inter alia, ‘a pusher carrier rotatably attached to the pusher bar.’ Claim 15 recites, inter alia, ‘a palletizer disposed adjacent the pallet dispenser.’ Claim 18 recites, inter alia, ‘a sensor associated with the pusher bar, the sensor being adapted to determine a jam condition of the lowermost pallet, and a controller for activating the motion means when the sensor determines the jam condition.’”

However, Examiner considers these issues to have been previously addressed to an understanding by one of ordinary skill in the art. Specifically, (1) the “pusher carrier rotatably attached to the pusher bar” is read on the combination of JAMES ET AL and BELL, since the pneumatic arm taught by is inherently rotatably attached, the arm inside the cylinder being able to rotate within it and the arm and cylinder being capable of providing rotatable movement when connected to do so. (2) The palletizer of JAMES ET AL clearly shows the palletizer disposed adjacent the pallet dispenser (see JAMES ET AL Fig. 4). (3) the sensors were addressed in the rejection above as follows: “Regarding claim 18 and 31, sensors (not shown) provide input to a programmable logic controller (25) to sense jams and stop the machine as appropriate if a jam occurs (see column 14:14-38).”

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**Conclusion**

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John Paradiso. The examiner can normally be reached Monday-Friday, 9:30 p.m. – 6:00 p.m. (ET).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada, can be reached at the number listed below.

Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Technology Center Receptionist.



Examiner John Paradiso: (703) 308-2825

Additional Phone Numbers:

Supervisor Rinaldi Rada: (571) 272-4467

Fax (Official): (571) 273-8300

Fax (Direct to Examiner) (571) 273-4466 (Drafts only)

June 7, 2007



Rinaldi I. Rada  
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